

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

DAVID LEE FLEMING,	)	
	)	No. 5:11-cv-00304-DCN
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
MICHAEL J. ASTRUE, COMMISSIONER	)	
OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	
_____	)	

This Social Security case is before the court upon the magistrate judge's recommendation that the Commissioner's decision be reversed and remanded for further administrative action.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v. Arn, 474 U.S. 140, 150 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

On July 25, 2012, defendant filed a response to the magistrate judge's Report and Recommendation (R&R). In this response, the Commissioner did not raise specific objections to the R&R, but simply stated that if remand is warranted, the case should be

remanded pursuant to sentence four rather than sentence six of 42 U.S.C. § 405(g).  
Def.'s Resp. 1 (citing Shalala v. Schaefer, 509 U.S. 292 (1993)). This court agrees that sentence four of § 405(g) grants courts the “power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing”; accordingly, the court adopts this change into the R&R.

A de novo review of the record indicates the magistrate judge's report otherwise accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's R&R is incorporated into this order. For the reasons articulated by the magistrate judge, the decision of the Commissioner is hereby **REVERSED AND REMANDED** under sentence four of 42 U.S.C. § 405(g) for further administrative action.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

**DAVID C. NORTON**  
**UNITED STATES DISTRICT JUDGE**

**August 24, 2012**  
**Charleston, South Carolina**